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August 2, 2017

**BY OVERNIGHT COURIER**

National Freedom of Information Officer  
U.S. Environmental Protection Agency  
1301 Constitution Avenue, NW, Room 6416 West  
Washington, D.C. 20004

Regional Freedom of Information Officer  
U.S. EPA, Region 1 (OARM01-6)  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

Re: Freedom of Information Act Request Regarding *Ocean Disposal; Designation of a Dredged Material Disposal Site in Eastern Region of Long Island Sound; Connecticut*, 81 Fed. Reg. 87820 (Dec. 6, 2016)

Dear Sir or Madam:

The Department of State ("NYSDOS") respectfully requests that the U.S. Environmental Protection Agency ("EPA") provide, pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), and the pertinent EPA regulations, 40 C.F.R. § 2.100 *et seq.*, certain records concerning EPA's designation of a disposal site for dredged materials known as the Eastern Long Island Sound Disposal Site (the "Site") published in the above-referenced Federal Register notice.

Specifically, NYSDOS asks that EPA produce the following:

1. All written notes, documents, communications, field surveys, graphs, flow models and/or studies whether in electronic form or hard copy, pertaining to temporal and seasonal variability of Thames River outflows.
2. All written or graphic information or communications, whether in electronic form or hard copy, relating to the spatial and temporal effects of outflows (during ebb and flow stages) and bedload transport from Thames River on NL-Wa and NL-Wb.
3. All information and documents, whether in electronic form or hard copy, used to provide substitute data for the inoperability of equipment at buoys 3 and 7 in Campaign 1 of the Physical Oceanography Study: Modeling (SEIS, Appendix C-2) p. 26, Figures 12 and 13, and, as applied to the Site:
  - a. Substitute data used to characterize conditions during Campaign 1, including without limitation:
    - i. mean and maximum bottom stresses;



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- ii. depth-averaged velocity;
    - iii. wave height.
  - b. Explanation for the variation between the FVCOM modeled velocities (black) and velocity measurements at buoy 3 as shown in Figures 12 and 13 of Appendix C-2.
4. All written notes, documents, communications, surveys and/or studies whether in electronic form or hard copy, pertaining to anticipated stability, resuspension and mobility of sediments disposed at NL-Wa and/or NL-Wb.
  5. All written notes, documents, communications, surveys, graphs and/or studies whether in electronic form or hard copy, pertaining to the characteristics of NL-Wa and/or NL-Wb as a non-dispersive (containment) disposal site.
  6. All written or graphic information or communications, whether in electronic form or hard copy, relating to the choice of a 0.75 Pascal critical stress threshold to measure erosion potential of disposed dredged material, and, as applied to the Site:
    - a. the distribution of shear stress throughout the Site, including the frequency with which 0.75 Pa was exceeded within NL-Wa and/or NL-Wb;
    - b. any comparisons of site characteristics and sediment sizes between NL-Wa and/or NL-Wb with a similar site in the North Sea reviewed in the Thompson et al. (2011) study (cited at p. 59 in Appendix C-2, "Physical Oceanography Study: Modeling" in the SEIS).
  7. All information or communications, whether in electronic form or hard copy, relating to modeling showing movement of material of a few hundred feet per year as applied to the Site to determine if the excluded rocky outcroppings with a 300-foot buffer would be buried in sediment over time.
  8. All written notes, documents and/or communications, whether in electronic form or hard copy, pertaining to amending the Zone of Siting Feasibility in eastern Long Island Sound to limit the range of alternative disposal sites.
  9. All written comments, whether in electronic form or hard copy, received from any source, including federal agencies, between October 3, 2016, and the present date regarding the designation of a dredged material disposal site in eastern Long Island Sound.

NYDOS also respectfully requests that EPA waive the fee that it would otherwise charge for search and production of the records described above. FOIA requires that requested records be provided without charge if "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); see also 40 C.F.R. § 2.107(l)(1). The requested disclosure would meet both of those requirements.

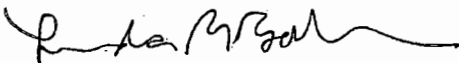
First, the records requested would shed light on a matter of considerable public interest, namely, EPA's designation of the Site. As EPA is aware, New York State, through the NYSDOS and the New York State Department of Environmental Conservation ("NYSDEC"), as well as a number of New York citizen groups and individual residents of the State, has expressed concern with, or opposition to, the designation of the Site. NYSDOS and NYSDEC have submitted detailed comments to EPA regarding the proposed designation of the Site. Providing the records requested above to NYSDOS would allow the State's representatives to review, on behalf of itself and its affected citizens, additional documents regarding the designation of the Site and the process that led to it that are not, to the State's knowledge, publicly available at this time. Based on the requested records, New York State anticipates being able to determine with more specificity what evidence and reasoning EPA relied upon or otherwise considered that may support or be contrary to the designation of the Site, and New York State may then refer to, or attach, the requested records in future public filings in litigation or in other forums. Thus, providing the requested records is likely to contribute significantly to public understanding of the operations or activities of the government, namely EPA's designation of the Site. See 40 C.F.R. § 2.107(l)(2).

Second, NYSDOS's interest in obtaining the documents is not commercial, since it, as a state government, has no commercial interest in the records sought. Instead, as noted above, it seeks these records in the exercise of its governmental functions to serve the public interest by learning more about the information available to and developed by EPA as it made its decision to designate the Site. "Congress amended FOIA to ensure that it is 'liberally construed in favor of waivers for noncommercial requesters.'" *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (internal citation omitted). Accordingly, because NYSDOS, as a state governmental agency, and New York State, as a state government, have no commercial interest that would be furthered by the requested disclosure, this request satisfies the second prerequisite for a fee waiver as well. See 40 C.F.R. § 2.107(l)(3).

Nonetheless, in order to prevent delay in EPA's provision of the requested records, NYSDOS is willing, if necessary and under protest, to pay fees for the production of the records in accordance with 40 C.F.R. § 2.107(c)(1)(iv), (c)(2) and (d). Thus, please provide the requested records irrespective of the status and outcome of EPA's evaluation of this request for a waiver of all costs and fees. Please contact me and obtain my approval, however, before undertaking any action that would cause the fees to exceed two hundred dollars (\$200). Payment of such fees will not constitute any waiver of NYSDOS's or New York State's right to seek administrative or judicial review of any denial of its fee waiver request.

Please direct the records or any other response to my attention. If you should have any questions, please feel free to contact me at (212) 417-5803 or at [linda.baldwin@dos.ny.gov](mailto:linda.baldwin@dos.ny.gov). Thank you in advance for your prompt attention to this request.

Sincerely,



Linda M. Baldwin  
General Counsel